



HOUSE BILL 45: Accelerate Cleanup of Industrial Properties

2011-2012 General Assembly

Committee:	Senate Finance	Date:	April 13, 2011
Introduced by:	Representatives Gillespie, Cook, Gibson	Prepared by:	Jeff Hudson
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: *House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.*

[As introduced, this bill was identical to S48, as introduced by Sen. Allran, which is currently in Senate Agriculture/Environment/Natural Resources.]

CURRENT LAW AND BACKGROUND:

North Carolina, in conjunction with the federal government, has implemented a number of programs to address remediation or cleanup of environmental contamination. Based on the source, location, and nature of the contaminants present, requirements for oversight and cleanup are established within an applicable program. Each program has its own standards, methods, and requirements. In some cases, a contaminated site may come under the authority of multiple programs.

Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses; are protective of public health, safety, and welfare and the environment; and comply with an applicable program's standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or the Department of Environment and Natural Resources (DENR). Some State programs for cleanup of environmental contamination, however, allow cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards. These programs include the Petroleum Underground Storage Tank Cleanup Program, the Dry-Cleaning Solvent Cleanup Program, and the State's Brownfields Property Reuse Act.

BILL ANALYSIS:

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.

Applicability:

Risk-based cleanup would be available for contaminated industrial sites that are governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control and where the release of contamination was reported to DENR prior to March 1, 2011. Risk-based cleanup would not be available for contaminated industrial sites that are governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

Site-specific Remediation Standards:

Site-specific remediation or cleanup standards would be developed for contaminated industrial sites to eliminate or reduce to protective levels any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site. The standards would have to be developed in accordance with a number of specific requirements for the protection of air quality, surface water and groundwater quality, and human health.

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Remedial Investigation Report and Remedial Action Plan:

A person who proposes a risk-based cleanup must prepare and submit to DENR a remedial investigation report that provides detailed information on the site, contamination at the site, risks posed by the contamination, adjacent properties, and any other information required by DENR. The person would then prepare and submit to DENR a proposed remedial action plan that provides for how the site would be cleaned up in order to protect public health, safety, and welfare and the environment and proof of financial assurance that sufficient funds are available to carry out the cleanup.

Notice of Intent to Remediate:

A person who proposes a risk-based cleanup must send a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners. The notice must include all of the information contained in the remedial investigation report. The person must also submit to DENR a certification that the notice of intent was properly distributed, information and comments received in response to the notice, and a description of how the remedial action plan was modified in response to the comments.

Review and Approval of Proposed Remedial Action Plans:

DENR must review each proposed remedial action plan and make a number of determinations prior to approving a plan, including whether the site-specific cleanup standards are appropriate for the site, that no unauthorized levels of contaminants will migrate from the site to adjacent properties, and that the plan is protective of public health, safety, and welfare and the environment. In its review and consideration of the proposed plan, DENR must consider information provided by the person who proposes the plan as well as information provided by the local governments and adjoining landowners.

Attainment of the Remediation Standard:

When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may only require additional cleanup under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

Fees:

The fee for participation in a risk-based cleanup is \$4,500 for each acre or portion of an acre of contamination, with a cap of \$125,000 regardless of the size of the site. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

Construction of the Act:

The Act may not be construed or implemented to jeopardize federal authorization under any of the federal statutes, programs, or requirements for the cleanup of contamination; limit the authority of DENR to require investigation, response, or cleanup of environmental contamination necessary to address an imminent threat to public health, safety, or welfare or the environment; or to affect or prevent the enforcement of any local government land-use or development regulation or ordinance.

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Dry-cleaning Site Compliance with Land-use Restrictions:

House Bill 45 would provide that if a person responsible for a property subject to land-use restrictions under the Dry-Cleaning Solvent Cleanup Act fails to submit an annual certification that the land-use restrictions are properly recorded and followed, the Environmental Management Commission shall issue a notice of such failure to the person. The notice must inform the person of the actions needed to come into compliance and give the person at least 30 calendar days within which to come into compliance. If the person fails to come into compliance during this time, the person will then be subject to enforcement procedures.

Study of Costs Associated with Inactive Hazardous Substance or Waste Disposal Sites:

House Bill 45 would direct the Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, to study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially-viable responsible party. The Commission will report its findings and recommendations including any legislative proposals to the 2012 General Assembly, upon its convening.

EFFECTIVE DATE: The act would become effective when it becomes law.